Commission Implementing Decision (EU) 2020/1073 of 17 July 2020 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (Only the Dutch version is authentic)

COMMISSION IMPLEMENTING DECISION (EU) 2020/1073

of 17 July 2020

granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(Only the Dutch version is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources[(1)], and in particular the third subparagraph of paragraph 2 of Annex III thereto,

Whereas:

(1) By Decision 2005/880/EC[(2)], the Commission granted a derogation requested by the Netherlands pursuant to Directive 91/676/EEC for the purpose of allowing the application of grazing livestock manure up to a limit of 250 kg nitrogen per hectare per year on farms with at least 70 % grassland.

(2) By Decision 2010/65/EU[(3)], the Commission amended Decision 2005/880/EC and extended the derogation until 31 December 2013.

(3) By Commission Implementing Decision 2014/291/EU[(4)], which expired on 31 December 2017, the Netherlands was granted a derogation pursuant to Directive 91/676/EEC to allow the application of grazing livestock manure on farms with at least 80 % grassland up to a limit of 230 kg nitrogen per hectare per year for farms on southern and central sandy soils and on loess soils and up to a limit of 250 kg nitrogen per hectare per year for farms on other soils. The derogation concerned 19 564 farms in 2016, corresponding to 47 % of the total net agricultural area in the Netherlands.

(4) By Commission Implementing Decision (EU) 2018/820[(5)], which ceased to apply on 1 January 2020, the Netherlands was granted a derogation pursuant to Directive 91/676/EEC to allow the application of grazing livestock manure on farms with at least 80 % grassland up to a limit of 230 kg nitrogen per hectare per year for farms on southern and central sandy soils and on loess soils and up to a limit of 250 kg nitrogen per hectare per year for farms on other soils. The derogation concerned 18 818 farms in 2019, corresponding to 44,7 % of the total net agricultural area in the Netherlands.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2020/1073. (See end of Document for details)*

(5) As recognised in Implementing Decision (EU) 2018/820, over the recent years the implementation by the Netherlands of its manure management policy suffered some set-backs leading to a situation where there were concerns over possible fraud. This situation required the Netherlands to step up its efforts in preventing fraud in the implementation of its manure policy. While the 6th Dutch Action Programme, already provides for measures aimed at reinforcing the control and inspections with a view to improving overall compliance with the rules of the Dutch manure policy, additional efforts were needed to be deployed to foster effective implementation and full compliance. Those efforts included the establishment of an enhanced enforcement strategy, taking into account also the provisions of Directive 2008/99/EC of the European Parliament and of the Council[6]. The strategy was to be based on an independent assessment of compliance with the rules on Dutch manure policy and contain specific measures aiming at further strengthening inspections and controls and a clear methodology to establish sufficiently dissuasive penalties and sanctions. It was therefore justified to limit the period of validity of Implementing Decision (EU) 2018/820 in order to enable the Netherlands to fully implement the enhanced enforecement strategy.

(6) By letter of 4 February 2020, the Netherlands submitted to the Commission a request, under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC, for a renewal of the derogation for the period 2020 to 2021 (‘the Dutch request’).

(7) The Netherlands applies, in conformity with Article 3(5) of Directive 91/676/EEC, an action programme throughout its whole territory. The Dutch legislation implementing Directive 91/676/EEC includes application standards both for nitrogen and phosphate.

(8) According to the data provided by the Netherlands, in the period 2016 to 2019, the number of cattle in the country decreased by 0,2 % as compared to the period 2012 to 2015. The number of pigs and poultry in the Netherlands increased by 0,6 % and 3,4 %, respectively, for the same period. Since 2006, Dutch legislation[7] sets limitations on the number of pigs and poultry. Moreover, since January 2015, Dutch legislation[8] requires that an appropriate share of surplus manure from the dairy sector be processed. In addition, a system of phoshate production rights for dairy cattle has been introduced[9] in the Netherlands since 1 January 2018. All of those measures aim at preventing pollution of water bodies.

(9) The Netherlands reported that, in the period 2014 to 2017, nitrogen use from livestock manure in the Netherlands was 417 000 tonnes, which was an increase of 4,04 % as compared to the period 2010 to 2013. The use of Chemical N fertiliser in the Netherlands increased by approximately 3,3 % in the period 2014 to 2017 compared to the period 2010 to 2013.

(10) According to the scientific data underpinning provided by the Dutch authorities, the climate in the Netherlands, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range, promotes a long grass-growing season of 250 days per year.

(11) Moreover, the information provided by the Netherlands in the context of the previous derogation granted by Implementing Decision 2014/291/EU indicates that that derogation has not led to a deterioration of the Dutch water bodies. For instance, the nitrate concentration in the water leaving the root zone on monitored holdings covered by authorisations has decreased since 2006 and was on average below 50 mg/l in 2017 and 2018. However, provisional data indicate an increase in nitrates concentrations in 2019 in southern sandy and loess soils because of the effects of drought in 2018.

(12) The data reported by the Netherlands under Article 10 of Directive 91/676/EEC shows that for the period 2012 to 2015, approximately 88 % of the groundwater monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 79 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. The data also shows that for the period 2012 to 2015, 99 % of the surface water monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 96 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. The data indicates a stable or decreasing trend in nitrate concentration in groundwater and surface water compared to the period 2008 to 2011. Nevertheless, in the reporting period 2012 to 2015, 60 % of the freshwaters were eutrophic, 13 % potentially eutrophic and 27 % not eutrophic.

(13) After examination of the Dutch request and in the light of the 6th Dutch Action Programme and the experience gained from the derogation granted by Implementing Decision 2014/291/EU, the Commission considers that the amount of grazing livestock manure proposed by the Netherlands, corresponding to 230 kg nitrogen per hectare per year on farms with at least 80 % grassland on southern and central sandy soils and on loess soils, and 250 kg nitrogen per hectare per year on farms with at least 80 % grassland on other soils, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met by the Netherlands, and is justified on the basis of objective criteria.

(14) The Netherlands should ensure that the pressure on water bodies as a consequence of growing livestock numbers and the associated manure production does not increase. To that end the Netherlands should ensure that total manure production, both in terms of nitrogen and phosphorus, does not increase beyond the level of the year 2002. New legislation implementing the 6th Dutch Action Programme should therefore provide for a binding manure production ceiling which is not to be exceeded and which can be invoked against individual farmers where needed.

(15) The authorisations to individual farmers are subject to certain conditions that are aimed at ensuring fertilisation at farm level based on crop needs and reduction and prevention of nitrogen and phosphorus losses to water. Those conditions should therefore include requirements that a fertiliser plan has been established at farm level, that fertiliser practices are recorded through fertiliser accounts, that periodic soil analysis are carried out, that green cover is applied in winter after maize, that specific provisions on grass ploughing are complied with, that no manure is applied before grass ploughing, that the fertilisation takes into account the contribution of leguminous crops, and that no phosphate from chemical fertilisers is applied to the land.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2020/1073. (See end of Document for details)*

(16) The report on the impact of Directive 91/676/EEC on gaseous N emissions[10] concluded that in some regions with high livestock densities, the derogation may result in higher gaseous emissions. That possible consequence of the derogation on ammonia-emmission was confirmed in a report of 12 February 2020, prepared by the 'Commissie Deskundigen Meststoffenwet' of the Netherlands, that was provided to the Commission. Those emissions result in extra nitrogen deposition adversely impacting the Natura 2000 sites and affecting the quality of the waters, leading to eutrophication. Therefore, appropriate measures should be taken to reduce ammonia emissions, including low emission spreading techniques, where necessary in combination with a maximum temperature at which manure can be applied.

(17) In line with the requirements of Implementing Decision (EU) 2018/820, the Netherlands notified its enhanced enforcement strategy on 28 September 2018. A first progress report on the implementation of that strategy was submitted on 28 June 2019. A further update of that progress report was submitted on 18 November 2019. The progress report showed that, despite some efforts taken, there were delays in the implementation of the strategy and the Netherlands was not in a position to demonstrate a reduction in the cases of non compliance or irregularities.

(18) Additional safeguards and reassurances that the strategy would really deliver on minimising fraud are therefore needed. These should include the setting of deadlines for the full implementation of the strategy and of targets which allow to judge its effectiveness. It is also necessary to provide for the revision of the strategy before the end of 2021, which should include further reinforcement of the controls if necessary in the light of the experience gained during its implementation.

(19) An update report on the further implementation of the enhanced enforcement strategy should be submitted every year, including the possible impact of the measures to prevent the risk of spreading of the COVID-19 virus on the implementation of the strategy.

(20) Directive 2000/60/EC of the European Parliament and of the Council[11] provides for a comprehensive, cross-border approach to water protection organised around river basin districts (RBDs), with the objective of achieving good status for European bodies of water. Reducing nutrients is an integral part of that objective. Granting of a derogation under this Decision is without prejudice to the provisions of Directive 2000/60/EC and does not exclude that additional measures may be needed to fulfill obligations derived from that Directive.

(21) Directive 2007/2/EC of the European Parliament and of the Council[12] lays down general rules aimed at the establishment of the Infrastructure for Spatial Information in the Union for the purposes of environmental policies of the Union and policies or activities of the Union which may have an impact on the environment. Where applicable, the spatial information collected in the context of this Decision should be in line with the provisions set out in that Directive. In order to reduce the administrative burden and enhance data coherence, the Netherlands, when collecting the necessary data under this Decision, should, where appropriate, make use of the information generated under the Integrated Administration and Control System established pursuant

to Chapter II of Title V of Regulation (EU) No 1306/2013 of the European Parliament and of the Council[13].

(22) Considering that the Dutch request concerns a renewal of the derogation granted by Implementing Decision (EU) 2018/820 for the period 2020 to 2021, this Decision should apply for two years as from 1 January 2020.

(23) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

Article 1

Derogation

The derogation requested by the Netherlands by letter of 4 February 2020, for the purpose of allowing application to the land of a higher amount of nitrogen from grazing livestock manure than that provided for in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC ('the derogation'), is granted, subject to the conditions laid down in this Decision.

Granting of a derogation under this Decision is without prejudice to the provisions of Directive 2000/60/EC.

Article 2

Scope

The derogation applies to grassland farms for which an authorisation has been granted in accordance with Article 6.

Article 3

Definitions

For the purposes of this Decision, the following definitions shall apply:

(1) 'grassland farm' means any holding where at least 80 % of the acreage available for manure application is grass;

(2) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats, horses, donkeys, deer, and water buffalo;

(3) 'farmland' means the acreage owned, rented or managed by the farmer under a written individual contract and on which the farmer has a direct management responsibility

(4) 'grass' means permanent grassland or temporary grassland which lies less than five years;

(5) 'fertilisation plan' means a calculation of the planned use and availability of nutrients;

(6) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients;